INITIAL STATEMENT OF REASONS

(October 16, 2008)

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Chapter 1248, Statutes of 1990) (Act), created a comprehensive state oil spill program for marine waters. Among its many provisions, the Act authorized the Administrator to require the development of oil spill contingency plans for tank vessels, nontank vessels, and marine facilities. These plans are to be used to prepare for the response effort that would be necessary in the event of a discharge of oil into the marine waters of the State. The Administrator is required to establish regulations and guidelines that provide for the best achievable protection of the coastal and marine resources, and ensure that all areas of the coast are at all times protected by prevention, response, containment and clean-up equipment and operations.

Following the enactment of the above-cited legislation, and the establishment of the Office of Spill Prevention and Response (OSPR), regulations governing oil spill contingency plans were adopted to ensure that affected public had clear and timely information regarding the development and submittal of these plans. These regulations were necessary to implement, interpret and make specific Government Code Sections 8670.28 through 8670.31, and 8670.36.

The proposed amendments to the regulations are needed to advise owners and operators of tank vessels and nontank vessels of the Administrator's continuing responsibility to attain best achievable protection of California's coastal resources and marine waters. To this end, response times have been added to High Volume Port areas to improve oil containment and recovery in these high vessel traffic areas. Other changes have been proposed to consolidate the current on-water recovery requirement into a table format.

The specific purpose for each adoption contained in these proposed regulations is set forth below:

Section 790 Definitions and Abbreviations:

Subsection (o)(6) has been added to describe "Oil Pollution Risk Areas". These areas ("OPRAs") now require containment booming within 2 hours, as described in the on-water recovery regulations in Sections 818.02(e)(3)(B) and 827.02(h)(2)(B), respectively. The OPRA locations selected are representative areas in the High Volume Ports where vessel traffic might pose risk of an oil spill. The specific locations selected are those where oil could be released from vessels with rapid spreading and serious risk to natural resources which in turn would require demanding mobilization of response resources. These OPRAs reflect both vessel traffic patterns and coastal exposure.

The rest of Subsection (o) has been re-numbered to accommodate this addition.

Section 818.02 TANK VESSEL PLAN CONTENT

Subsection (e)(3)(B) has been amended to consolidate the on-water recovery requirements formerly found in regulation text, into a table format. All entries in the table, other than those in **bold**, reflect current requirements. The table format encompasses requirements for all marine waters, instead of having these requirements separated out by area (e.g., "High Volume Port", Balance of the Coast, etc). This is a more convenient method of displaying this information.

Subsection (e)(3)(B) has also been amended to require response times for the containment and recovery of oil that reflect OSPR's Best Achievable Protection statutory Mandate (Government Code Section 8670.3(b)). The Oil Spill Response Organization (OSRO) unannounced drill program has shown that the current on-water recovery requirements can be met and exceeded well beyond what is expected of the plan holders. With the completion of numerous drills, it has been shown that OSROs can meet the six hour requirement in four hours or less. This was validated during the on-water recovery response for the Cosco Busan. Therefore, it is recommended that a new four hour on-water recovery requirement be established for High Volume Port areas.

OSPR has reviewed the feasibility of establishing a two hour "on-scene" containment boom requirement for identified Oil Pollution Risk Areas ("OPRA", see Sections 818.2(e)(3)(B)(i) for tank vessels and Section 827.02(h)(2)(B)(i) for nontank vessels). The OPRA locations selected were representative areas in the high volume ports where vessel traffic might pose threats of an oil spill. The specific release locations were those where oil released from vessels could cause rapid spreading and serious risk to natural resources which in turn would require demanding mobilization of response resources. These OPRAs reflect both vessel traffic patterns and coastal exposure. OSPR is proposing a new two hour containment requirement be established in regulations. 2, 000 feet of containment boom must be deployed within ½ mile radius of the designated OPRAs (identified by latitude and longitude). This will help ensure that containment resources are available, in most of the heavily trafficked areas of the High Volume Ports, during the critical initial hours of a spill. One of the key factors in resource protection is prompt containment and on-water recovery. Strong currents and short distances between potential spill sites to the shoreline can increase the likelihood that on-water oil will reach the shoreline where it can do much more damage and be much more difficult and expensive to clean up than if it is contained and recovered on-water.

While there are limitations in using containment booming open water, its professional application may be effective to contain, deflect, exclude, or collect oil. While no oil spill cleanup technique can be expected to be 100% effective, any boom which can be provided to engage the slick can be used to limit the unmitigated spread of at least part of the slick, perhaps encircled and drifting with the current to avoid entrainment (i.e., oil escaping under the boom). Boom can often be strategically placed to exclude oil from entering and impacting a tidal wetland or to deflect oil away from a sensitive shoreline. In some cases boom can be used effectively to divert oil out of open uncontrollable waters to near shore locations where currents are less aggressive and oil can be confined until skimmers or other removal equipment arrives.

If these amendments are adopted, plan holders would be required to contract with a Rated OSRO that is capable of meeting these new requirements. The determination of the distances that can be typically covered by the OSRO's were based on the United States Coast Guard OSRO Classification System, using standardized travel speeds of 35 miles per hour for land and 5 knots for water. The distance is then divided by the speed to determine the travel time. Applying these standards, OSPR believes that the OSROs can meet these new requirements with little, if any, additional resources and staff.

Additionally, time frames (shown in **bold**) have been added at the 18 hour level for High Volume Ports; at the 6, 18, and 24 hour level for Facility Transfer Areas and the Santa Barbara Channel area; and at the 6, 12, and 24 hour level for the Balance of the Coast. These requirements reflect a more uniform "cascading" of resources over time, and have been determined to meet the Best Achievable Protection mandate for California's Marine Waters.

Section 827.02 NONTANK VESSEL PLAN CONTENT

Subsection (h)(2)(B) has been amended to consolidate the on-water recovery requirements formerly found in regulation text, into a table format. All entries in the table, other than those in **bold**, reflect current requirements. The table format encompasses requirements for all marine waters, instead of having these requirements separated out. This is felt to be a more convenient, user-friendly, method of displaying this information.

Subsection (h)(2)(B) has also been amended to require response times for the containment and recovery of oil that reflect OSPR's Best Achievable Protection statutory Mandate (Government Code Section 8670.3(b)). The Oil Spill Response Organization (OSRO) unannounced drill program has shown that the current on-water recovery requirements can be met and exceeded well beyond what is expected of the plan holders. With the completion of numerous drills, it has been shown that OSROs can meet the six hour requirement in four hours or less. This was validated during the on-water recovery response for the Cosco Busan. Therefore, it is recommended that a new four hour on-water recovery requirement be established for High Volume Port areas. The Reasonable Worst Case Spill (RWCS) volumes have been moved up accordingly in all areas of marine waters.

OSPR has reviewed the feasibility of establishing a two hour "on-scene" containment boom requirement for identified Oil Pollution Risk Areas ("OPRA", see Sections 818.2(e)(3)(B)(i) for tank vessels and Section 827.02(h)(2)(B)(i) for nontank vessels). The OPRA locations selected were representative areas in the high volume ports where vessel traffic might pose threats of an oil spill. The specific release locations were those where oil released from vessels could cause rapid spreading and serious risk to natural resources which in turn would require demanding mobilization of response resources. These OPRAs reflect both vessel traffic patterns and coastal exposure. OSPR is proposing a new two hour containment requirement be established in regulations. 2, 000 feet of containment boom must be deployed within ½ mile radius of the designated

OPRAs (identified by latitude and longitude). This will help ensure that containment resources are available, in most of the heavily trafficked areas of the High Volume Ports, during the critical initial hours of a spill. One of the key factors in resource protection is prompt containment and on-water recovery. Strong currents and short distances between potential spill sites to the shoreline can increase the likelihood that on-water oil will reach the shoreline where it can do much more damage and be much more difficult and expensive to clean up than if it is contained and recovered on-water.

If these amendments are adopted, plan holders would be required to contract with a Rated OSRO that is capable of meeting these new requirements. The determination of the distances that can be typically covered by the OSRO's were based on the United States Coast Guard OSRO Classification System, using standardized travel speeds of 35 miles per hour for land and 5 knots for water. The distance is then divided by the speed to determine the travel time. Applying these standards, OSPR believes that the OSROs can meet these new requirements with little, if any, additional resources and staff.

DOCUMENTS RELIED UPON

Technical, theoretical or empirical studies or reports relied upon:

None

BUSINESS IMPACT

The OSPR has made an initial determination that the proposed amendments may have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed amendments do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No alternative which was considered by the OSPR would be more effective than or equally as effective as and less burdensome to affected private persons than the proposed amended regulations

COMPLIANCE WITH GOVERNMENT CODE SECTIONS 11346.2(b)(6), 11346.5, and 11349(f)

The regulations do not conflict with Federal statutes or regulations.